

facilities; (g) proposed tariff charges and regulations for domestic applications; (h) a statement of the accounting proposed to be performed in connection with the project; and (i) whether the carrier has an affiliation with a foreign carrier.⁸⁹ We tentatively conclude that all of this information is either collected elsewhere by the Commission, unnecessary, confusing in light of the provisions of Section 402(b)(2)(A), or no longer of decisional significance to the Commission.

56. Our proposed streamlined application procedure also would revise the current requirement that a carrier provide a summary of the factors showing the public need for the proposed facility and a detailed economic justification.⁹⁰ We propose to allow a carrier instead to certify that there is a public need for its proposed facilities and that they are economically justified. The filing of detailed statements setting forth this information is burdensome on carriers and, in recent years, it has been our experience that few (if any) carriers have filed Section 214 applications proposing projects that do not meet these requirements. Nevertheless, we retain the authority to request from a carrier this or any other detailed information our review of a specific application may require.⁹¹

57. We also propose automatic approval of Section 214 applications on the thirty-first day following the date on which each application is placed on public notice, unless the Common Carrier Bureau notifies the applicant that the grant will not be automatically effective, or another party files an opposition with the Commission and serves the opposition on the applicant. If the Bureau so notifies the applicant, or an opposition is filed and served, within 30 days, final action by the Bureau would be taken within 90 days of the expiration of the 30 day period (*i.e.*, within 120 days of the issuance of public notice.) We seek comment on these proposed Part 63 rule amendments and on alternative proposals to streamline the Section 214 approval process.

58. Although we have tentatively concluded that streamlined regulation will be appropriate with respect to dominant rate-of-return carriers, we recognize that the firms remaining under rate of return regulation are generally small (accounting, in the aggregate, for

⁸⁹ Information concerning affiliation with foreign carriers remains relevant with respect to the provision of international telecommunications services. Accordingly, affiliation information continues to be required under Sections 63.11 and 63.18(h) of the Commission's rules, 47 C.F.R. §§ 63.11 and 63.18(h).

⁹⁰ 47 C.F.R. § 63.01(l-m).

⁹¹ 47 U.S.C. § 218 ("The Commission may obtain from . . . carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created"); *see also* 47 C.F.R. § 1.17.

less than approximately 2% of interstate revenues),⁹² and that, as a practical matter, few Section 214 applications from such firms have ever been challenged or rejected. Accordingly, we seek comment on whether, as with the other types of carriers discussed above, the Commission should forbear from regulating these small carriers under Section 214 altogether.

2. Blanket Authority for Small Projects

59. Current Commission rules allow carriers to file streamlined, informal applications for Section 214 certification for certain small, in-region projects with a cost of less than \$2,000,000 each or an annual rental of less than \$500,000 each.⁹³ In recent years, it has been our experience that few applications have been filed under this section and those few have not been contested, but instead have been deemed approved twenty one days after the Commission issues public notice that the application has been accepted for filing. In addition, based on the size of the projects involved, we believe that project-specific applications are not required to protect ratepayers from unnecessary rate increases. Accordingly, we tentatively conclude that we should grant blanket authority for small projects involving the construction, operation, or acquisition of new lines, or transmission over such lines.

60. We believe that it would be difficult for a carrier to engage in any substantial wasteful duplication of facilities or to raise its rates significantly based on projects undertaken pursuant to this rule. Not only are the dollar amounts involved small, but these projects require investment in facilities that, as a general matter, must be amortized over long periods of time, with the result that even a rate-of-return carrier could include only a fraction of the total outlay in its cost data for a single accounting period. As the rule is currently written,

⁹² According to our most recent data, "small" local exchange carriers, *i.e.* rate-of-return companies and average schedule companies with revenues under \$100 million, accounted for approximately 2% of total interstate revenues. In 1994, the total interstate revenue for all carriers was approximately \$80.3 billion. See Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Worksheet Data ("TRS Worksheet")*, Tbl. 3, All Carriers Reporting Interstate Revenues (Feb. 1996). Local exchange carriers (LECs) accounted for \$25.3 billion of that interstate revenue total. *Id.* at Tbl. 14, Local Exchange Carriers. We can estimate the portion of that \$25.3 billion total interstate LEC revenue that applies to small local exchange carriers by comparing the number of presubscribed lines for this category of local exchange carrier with the total presubscribed lines for all local exchange carriers. As of December 31, 1995, larger, reporting local exchange carriers account for 92.6 percent of the total presubscribed lines. Federal Communications Commission, CCB, Industry Analysis Division, *Preliminary Statistics of Common Carriers*, Tbl. 2.3, Total Presubscribed Lines for all Local Exchange Companies (July 1996). Thus, small local exchange carriers account for 7.4 percent of the presubscribed lines. Based on our assumption that the proportion of presubscribed lines accounted for by these carriers correlates directly with their proportion of revenues, we estimate that small local exchange carriers account for approximately 7.4 percent of the interstate revenues received by all LECs and less than 2.3 percent of total interstate revenues (which includes interexchange carrier revenue, as well).

⁹³ 47 C.F.R. § 63.03.

however, a carrier may engage in as many projects as it deems appropriate under this rule, subject to the approval of the Commission under the streamlined provisions of Section 63.03. Therefore, we tentatively conclude that a grant of blanket authority on any per-project basis would leave no meaningful check on the ability of a rate-of-return carrier to construct facilities at will, with the possible result that rates will be raised unnecessarily. Instead, we propose to grant blanket authority for carriers to construct, operate, or acquire new lines, or engage in transmission over such lines, subject to an annual cap on spending.

61. In developing an appropriate dollar amount for such an annual cap, we take initial note of the current \$2,000,000 per-project limit under our streamlined rule. We propose that one such project could be undertaken by a carrier on average every two months without any significant adverse effect on ratepayers.⁹⁴ However, we are also aware that there are great size differences between the largest and smallest rate-of-return carriers. Accordingly, for such large carriers, we propose an alternate annual percentage cap. Specifically, we propose that a carrier could increase the total book value of its lines by up to 10% in any given year without any significant adverse effects on ratepayers. Because these investments are typically amortized over long periods of time, any potential rate increase from such projects would necessarily be small.

62. In sum, we propose to replace the current \$2,000,000 per-project cap to allow carriers to engage in projects that, in the aggregate, either (1) have a total annual cost of no more than \$12,000,000 or an annual rental of no more than \$3,000,000; or (2) increase the total book value of the carrier's lines by not more than 10%. Projects in excess of this annual cap would be subject to the streamlined application procedures proposed above. We seek comment on this proposal, including specific comment on several issues. We request that commenters discuss (a) whether we should forbear from imposing Section 214 regulation on these projects, including specific reference to the forbearance criteria in the 1996 Act;⁹⁵ (b) whether we should subject these projects to the streamlined regulation proposed above; and (c) whether the proposed cost limits are appropriate.

D. Reporting Requirements

1. Current Section 214 Reporting Requirements

63. In the past, the Commission has streamlined its Section 214 application process or granted blanket authorizations when it was able to conclude that review of all information

⁹⁴ A carrier undertaking one \$2,000,000 project every two months would engage in six such projects each year, and spend \$12,000,000 annually. Accordingly, this \$12,000,000 figure is proposed below as an appropriate annual cap. A larger number of smaller projects, or a smaller number of larger projects, could also fit within such an annual cap. The example is illustrative only.

⁹⁵ 47 U.S.C. § 160.

required by Section 63.01 no longer was consistent with the public interest.⁹⁶ In connection with such streamlining or blanket authorization, the Commission has imposed reporting obligations on carriers engaging in the activities covered by these streamlined filing requirements or blanket authorizations. Part 63 of our rules currently imposes two such reporting requirements. Section 63.03(e)⁹⁷ of our rules requires annual reports from carriers that have obtained continuing authority to commence small projects within their existing service areas. Section 63.04(c)⁹⁸ imposes a similar, semiannual, reporting requirement on those carriers that have obtained continuing authority to provide temporary or emergency service.⁹⁹

64. If, as discussed above, we adopt a policy of forbearance toward certain classes of carriers, then we tentatively conclude that those classes of carriers would not be subject to any Section 214 reporting requirements under the Commission's rules. In addition, we tentatively conclude that the reporting burden should be substantially reduced for carriers required to obtain Section 214 certification.

2. Elimination of Reports

65. We tentatively conclude that the Commission no longer needs to require carriers to file routinely the reports required under Sections 63.03(e) and 63.04(c) of our rules. In recent years, neither the public nor the Commission's staff has made significant use of the information provided in these reports. Under Section 63.03(e), carriers may request continuing authority to commence small projects to supplement existing facilities within the

⁹⁶ See, e.g., 47 C.F.R. §§ 63.02, 63.03, 63.04, 63.07, 63.08.

⁹⁷ 47 C.F.R. § 63.03(e).

⁹⁸ 47 C.F.R. § 63.04(c).

⁹⁹ Until recently, our rules imposed two additional reporting requirements related to Section 214 regulation. Former Section 63.07(b) of our rules, 47 C.F.R. § 63.07(b), imposed a semiannual reporting requirement on nondominant carriers subject to the blanket authorization of 63.07(a). The Common Carrier Bureau eliminated this reporting requirement, finding that "elimination of this report is consistent with our goal of reducing burdensome and unnecessary reporting." *Revision of Reporting Requirements*, CC Docket No. 96-23, Report and Order, DA 96-1873, ¶ 29 (Com. Car. Bur. rel. Nov. 13, 1996). Section 63.15(b) of our rules imposed additional reporting requirements on international carriers that added circuits to a particular country under the blanket authority of 63.15(b). We recently substantially revised our international Section 214 rules and repealed Section 63.15(b). *International Section 214 Streamlining Order*, Appendix A, 11 FCC Rcd at 12923-41. For a more general discussion of the Commission's efforts to eliminate unnecessary reporting requirements, see *Improving Commission Processes*, Notice of Inquiry, 11 FCC Rcd 14006, 14014-15 (1996); *Public Notice, Common Carrier Bureau Eliminates and Reduces Reporting Requirements*, FCC No. 55228 (rel. Aug. 10, 1995); *Public Notice, Common Carrier Bureau Solicits Comments on Elimination of Divestiture Reports*, Report No. CC 95-34 (rel. June 14, 1995).

carrier's service area. Projects commenced under this authority must have a construction, installation, or acquisition cost of no more than \$70,000 or an annual rental cost of no more than \$14,000. Carriers subject to this requirement must file this report annually.

66. Under Section 63.04(c), carriers may request continuing authority to provide temporary or emergency service through the construction or installation of facilities for which the estimated construction, installation, and acquisition costs do not exceed \$35,000 or an annual rental of \$7000, as long as the project does not involve a "major action" under the Commission's environmental rules.¹⁰⁰ Carriers that obtain such authority are required to file semiannual reports identifying the projects commenced over the preceding six months.

67. It would be extremely difficult for carriers to construct or acquire significantly wasteful, duplicative facilities covered by either Section 63.03 or 63.04 because of the relatively small cost of the projects covered by those sections. Instead of obligating carriers to file these reports, we propose to rely on the Commission's general authority under the Communications Act to obtain information from carriers in individual instances if the information becomes necessary for us to perform our regulatory duties.¹⁰¹ Parties requesting that the Commission retain these reporting requirements should explain clearly how these reports have benefitted members of the public in the past and how the reports would benefit the public in the future.

E. Section 214 Discontinuance Requirements

68. Section 214(a) requires carriers that discontinue, reduce, or impair service to a community to obtain from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected.¹⁰² In general, dominant carriers seeking Commission authority to discontinue, reduce, or impair service are required, pursuant to current Section 63.61 of our rules, to file a formal application with the Commission. Depending on the nature of the service for which authority to discontinue is sought, Section 63.62 of our rules instructs applicants with respect to the contents of particular applications. Upon reviewing an application for discontinuance authority, the Commission then issues a

¹⁰⁰ 47 C.F.R. §§ 1.1306 - 1.1307.

¹⁰¹ 47 U.S.C. § 218 ("The Commission may obtain from . . . carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created"). See also 47 U.S.C. § 154(i); 47 C.F.R. § 1.17.

¹⁰² 47 U.S.C. § 214(a).

formal order granting or denying such authorization.¹⁰³

69. Under current Section 63.71 of our rules, non-dominant carriers seeking to reduce or discontinue service are required to notify all affected customers in writing of the planned discontinuance, reduction or impairment of service unless the Commission authorizes another form of notice in advance.¹⁰⁴ Non-dominant carriers must also file with the Commission an application that includes a description and the date of the planned discontinuance, reduction or impairment, the geographic areas of service affected, the dates and method of notice given to customers, and any other information the Commission may require.¹⁰⁵ The application is automatically granted on the thirty-first day after its filing with the Commission, unless the Commission notifies the applicant within that time that the grant will not automatically be effective.¹⁰⁶

70. The 1996 Act does not alter the Commission's authority under Section 214(a) with respect to discontinuances or reductions in services. We note, however, that carriers assume a certain amount of risk when entering a new geographic or product market. If regulatory requirements create significant barriers to exit, a carrier may be reluctant to accept potential risks and, as a result, may never enter the market. Accordingly, in order to further the 1996 Act's goal to promote competition, we seek in this proceeding to eliminate any unnecessary barriers to exit currently imposed by our rules. Specifically, we seek comment on whether the streamlined discontinuance procedures set forth in Section 63.71 of our rules, which currently apply only to domestic non-dominant carriers, should apply to all domestic common carriers.¹⁰⁷ In doing so, we tentatively conclude that the streamlined procedures contained in Section 63.71 appear to strike a reasonable balance between protecting consumers and reducing unnecessary barriers to exit for all carriers, whether dominant or non-dominant. We seek comment on this tentative conclusion.

71. As local exchange markets becomes increasingly competitive, however, many currently dominant LECs may find themselves under increasing pressure to reduce or eliminate service in unprofitable areas. Therefore, although we propose to extend the

¹⁰³ The Common Carrier Bureau recently granted blanket authority under 47 C.F.R. § 63.62(g) to US West Communications to discontinue service to small exchanges provided that certain conditions are met. *Petition and Application of US West Communications*, 10 FCC Rcd. 6077, 6081 (Com. Car. Bur. 1995). The Bureau's decision is consistent with our proposal in this proceeding to streamline our procedures for dominant carriers.

¹⁰⁴ 47 C.F.R. § 63.71(a).

¹⁰⁵ 47 C.F.R. § 63.71(b).

¹⁰⁶ 47 C.F.R. § 63.71(c).

¹⁰⁷ We recently amended Section 63.71 to make that section applicable only to domestic non-dominant carriers. *International Section 214 Streamlining Order*, 11 FCC Rcd at 12904-05.

applicability of Section 63.71 to domestic dominant carriers, we remain concerned that the relatively short advance notification period provided under Section 63.71 might allow a dominant carrier to obtain automatic discontinuance authority even though it is the only carrier serving a particular community. In addition, we are mindful of the Commission's obligation under the new universal service provisions of the 1996 Act to order a common carrier, or carriers, to provide interstate telecommunications service to an unserved community, or portion thereof, that requests such service.¹⁰⁸ At a minimum, therefore, we tentatively conclude that we should extend the advance notification period contained in Section 63.71 to 60 days with respect to domestic, dominant carriers, in the event that we do apply Section 63.71 to all domestic carriers. We seek comment on this tentative conclusion, including comment on (1) whether a 60 day advance notification period, in conjunction with the universal service support mechanisms recommended by the Joint Board and/or adopted by the Commission, will provide adequate incentives to carriers and protection to consumers; and (2) whether additional safeguards are necessary to protect consumers against discontinuance of service by dominant carriers; and (3) whether we should treat differently from all other carriers a dominant carrier that is either (a) the sole service provider in a particular community; or (b) relinquishing its designation as an eligible telecommunications carrier under Section 214(e)(4).¹⁰⁹

¹⁰⁸ Section 102(a) of the 1996 Act adds new subsection 214(e) to the Communications Act. Section 214(e)(3) provides:

If no common carrier will provide the services that are supported by Federal universal service support mechanisms under Section 254(c) to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

The Federal-State Joint Board on Universal Service recently provided its recommendations to the Commission. See *Universal Service Recommended Decision*, ¶¶ 179-182.

¹⁰⁹ 47 U.S.C. § 214(e)(4) was also added by Section 102(a) of the 1996 Act. It provides:

A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications

F. Technical Amendments to 47 C.F.R. Part 63

72. In light of the rule amendments proposed above, we tentatively conclude that we should rewrite the entire text of Sections 63.01, 63.02, and 63.03 of our rules, to repeal Sections 63.06 and 63.07 of our rules, and to make technical, conforming amendments to Sections 63.04, 63.08, 63.52, 63.61, 63.62 and 63.71 of our rules. We seek comment on our proposal to repeal or amend these rule sections.

73. The 1996 Act also provides that "a common carrier shall not be required to obtain a certificate under [S]ection 214 with respect to the establishment or operation of a system for the delivery of video programming."¹¹⁰ Accordingly, we propose an amendment to our rules, in the form of a new Section 63.01(b), to conform to this statutory mandate.

III. PROCEDURAL MATTERS**A. Ex Parte Presentations**

74. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period provided that they are disclosed as provided in the Commission's rules.¹¹¹

B. Regulatory Flexibility Act Analysis

75. We certify that the Regulatory Flexibility Act of 1980 is not applicable to this rulemaking proceeding. If the proposed rule changes are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act¹¹² because these rule changes would lessen, not increase, the regulatory burden on small businesses. The Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business

carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

See also Universal Service Recommended Decision, ¶ 157.

¹¹⁰ Section 651(c) of the Cable Communications Policy Act of 1984, added by Section 302(a) of the 1996 Act, codified at 47 U.S.C. § 571(c).

¹¹¹ *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206.

¹¹² 5 U.S.C. § 601(3).

Administration in accordance with Section 605(b) of the Regulatory Flexibility Act.¹¹³

C. Initial Paperwork Reduction Act Analysis

76. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995.¹¹⁴ Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the *Federal Register*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

77. In addition to filing comments with the Secretary, as detailed below, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain_t@al.eop.gov.

D. Comment Filing Procedures

78. Pursuant to applicable rules set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before February 24, 1997, and reply comments on or before March 17, 1997. To file formally in this proceeding, commenters and reply commenters must file an original and six copies of all comments, reply comments, and supporting comments. Commenters and reply commenters wishing each Commissioner to receive a personal copy of their comments must file an original and eleven copies. Comments and reply comments must comply with Section 1.49 and all other applicable sections of the Commission's rules.¹¹⁵ However, we require here that a summary be included with all comments, regardless of length. All comments must be

¹¹³ 5 U.S.C. § 605(b) (as amended by the Contract With America Advancement Act, Pub. L. No. 104-121, 110 Stat 847, 866 (1996)).

¹¹⁴ Pub. L. No. 104-13, *codified at* 44 U.S.C. §§ 3501-3520.

¹¹⁵ 47 C.F.R. § 1.49.

sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to the Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Suite 235, Washington, D.C. 20554. Parties must also file one copy of any documents filed in this docket with the Commission's duplicating contractor, International Transcription Services, Inc. ("ITS"), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (tel. 202-857-3800). Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Copies of comments and reply comments will also be available through ITS.

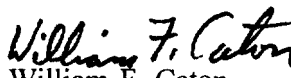
79. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions are in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Suite 235, Washington, D.C. 20554. Diskette submissions should be on a 3.5 inch diskette formatted in an IBM-compatible form using MS-DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read-only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comments or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

IV. ORDERING CLAUSES

80. Accordingly, IT IS HEREBY ORDERED that, pursuant to Sections 1, 4(i), 4(j), 10, 214, 218, 254 and 571 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214, 218, 254 and 571, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

81. IT IS FURTHER ORDERED that the Secretary shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b).

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A PROPOSED RULES

Part 63 of Title 47 of the Code of Federal Regulations is revised as follows:

PART 63 - NEW LINES, EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 is amended by revising the citation as follows:

AUTHORITY: Sections 1, 4(i), 4(j), **10**, **11**, 201-205, **214**, 218, 403 and **571** of the Communications Act of 1934, as amended, 47 U.S.C. secs. 151, 154(i), 154(j), **160**, 201-205, **214**, 218, 403, and **571** unless otherwise noted.

2. Section 63.01 is revised to read as follows:

§ 63.01 Exemption for extensions of lines and for systems for the delivery of video programming.

(a) Any common carrier proposing to undertake the extension of any line is exempt from the requirements of Section 214 of the Communications Act of 1934, as amended. For the purpose of this section, an *extension of any line* shall mean "a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach." This section does not relieve any common carrier from the obligation to obtain all necessary authorizations from the Commission for use of radio frequencies.

(b) A common carrier shall not be required to obtain a certificate under Section 214 of the Communications Act of 1934 with respect to the establishment or operation of a system for the delivery of video programming.

3. Section 63.02 is revised to read as follows:

§ 63.02 Forbearance from Section 214 requirements for price cap carriers, average schedule carriers, and domestic, non-dominant carriers.

(a) For the purpose of this section, the following definitions shall apply:

(1) *Price cap carrier* shall mean a carrier subject to regulation under 47 C.F.R. Sections 61.41 through 61.49 of this chapter.

(2) *Average schedule carrier* shall mean a carrier that employs average schedules in lieu of determining its costs.

(3) *Domestic, non-dominant carrier* shall mean a domestic carrier meeting the definition of a non-dominant carrier provided in Section 61.3(u) of this chapter.

(b) Any common carrier deemed to be a price cap, average schedule, or domestic, non-dominant carrier that is proposing to construct, acquire, or operate a new line, or engage in transmission over or by means of such line, and such line originates and terminates in the United States, is not required to file for authority pursuant to Section 214 of the Communications Act of 1934, as amended. This section does not relieve any common carrier from the obligation to obtain all necessary authorizations from the Commission for use of radio frequencies.

4. Section 63.03 is revised to read as follows:

§ 63.03 Special procedures for dominant, rate-of-return carriers.

(a) For the purpose of this section, the following definitions shall apply:

(1) *Dominant carrier* shall mean a carrier meeting the definition of a dominant carrier provided in Section 61.3(o) of this chapter.

(2) *Rate of return carrier* shall mean a local exchange carrier or a group of affiliated carriers that is not subject to price cap regulation under Sections 61.41 through 61.49 of this chapter, and that is not an average schedule carrier, as that term is defined in Section 63.02(a)(2) of this chapter.

(b) Any common carrier deemed to be a dominant, rate-of-return carrier is hereby granted authority under Section 214 of the Communications Act of 1934, 47 U.S.C. § 214, to construct, acquire, or operate new lines, or engage in transmission over or by means of such lines, subject to the following restrictions:

- (1) The lines must originate and terminate within the United States;
- (2) The lines must be categorically excluded from environmental processing under Section 1.1306 of this chapter.
- (3) A carrier's authority under this subsection is limited to lines:
 - (a) With a total annual construction or acquisition cost not exceeding \$12,000,000; or
 - (b) With a total annual rental cost not exceeding \$3,000,000; or
 - (c) Which increase the aggregate book value of the carrier's lines by not more than 10%.

(c) Any common carrier deemed to be a dominant, rate-of-return carrier that is seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended, to

construct, acquire, or operate a new line, or engage in transmission over or by means of such line, and such line originates and terminates in the United States, and such line is not subject to the blanket authorization of subsection (b) of this section, shall request such authority by formal application which shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience, and necessity. Such statement shall consist of the following information, as applicable:

- (1) The name, address, and telephone number of each applicant;
- (2) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;
- (3) The name, title, post office address, and telephone number of the officer and any other person, such as legal counsel, to whom correspondence concerning the application is to be addressed;
- (4) The points between which the proposed facilities are to be located;
- (5) A description of the facilities for which authority is requested and of the applicants existing facilities between the points identified above;
- (6) The following affidavit, executed by the carrier's president, chief executive officer, or other corporate officer with appropriate authority, under oath and subject to penalty for perjury:

"I, *(name and title)*, under oath and subject to penalty for perjury, certify that (a) there is a public need for these proposed facilities; and (2) these proposed facilities are economically justified. I have appropriate authority to make this certification on behalf of *(applicant)*, and I agree to provide any information the Commission requests to allow it to evaluate this certification or any other aspect of this application."

- (7) A statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of the Commission's rules. If answered affirmatively, an environmental assessment as described in § 1.1311 need not be filed with the application.

(c) An original and three copies of the application shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Applicant shall furnish a copy to the Governor of the state in which the line is to be constructed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, D.C. 20301.

(d) An application filed under this section shall be deemed granted without further Commission action on the thirty first (31st) day following the issuance of public notice that the application has been accepted for filing unless: (1) the Common Carrier Bureau notifies the applicant within 31 days of the issuance of such public notice that the application will not be automatically granted; or (2) within thirty days of the issuance of such public notice, a party files an opposition to the application with the Commission and serves it on the applicant. In either case, final action on the application will be taken by the Bureau within

120 days after the issuance of public notice that the application was accepted for filing.

(e) This section does not relieve any common carrier from the obligation to obtain all necessary authorizations from the Commission for use of radio frequencies.

5. Section 63.04 is amended by revising section (c) as follows:

§ 63.04 Special provisions relating to temporary or emergency service.

* * * * *

(c) Without regard to the other requirements of this part, and by application setting forth the need therefor, any carrier may request continuing authority, subject to termination by the Commission at any time upon 10 days' notice to the carrier, to provide temporary or emergency service by the construction or installation of facilities where the estimated construction, installation, and acquisition costs do not exceed \$35,000 or an annual rental of not more than \$7,000 provided that such project does not involve a major action under the Commission's environmental rules. (See Subpart I of Part 1 of this chapter.)

* * * * *

6. Sections 63.06 and 63.07 are removed and reserved, as follows:

§§ 63.06 - 63.07 [Reserved]

7. Section 63.08 is revised to read as follows:

§ 63.08 Lines outside of a carrier's exchange telephone service area.

(a) An exchange telephone common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. § 214 to provide lines, or for existing lines, outside of the exchange telephone service area of that carrier and any of its affiliates if the lines are * * *

(b) If a nondominant common carrier and its affiliates are not affiliated with an exchange telephone common carrier, the nondominant carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. § 214 to provide lines, or for existing lines, of the types described in paragraph (a) of this section between any domestic points. * * *

(c) A common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. § 214 to discontinue, reduce, or impair * * *

* * * * *

8. Section 63.52 is revised to read as follows:

§ 63.52 Copies required; fees; and filing periods.

* * * * *

(b) No application accepted for filing and subject to the provisions of §§ 63.03, 63.62, 63.69, 63.91, 63.502 or 63.505 of these rules shall be granted * * *

* * * * *

9. Section 63.61 is revised to read as follows:

§ 63.61 Applicability.

Any carrier subject to the provisions of Section 214 of the Communications Act of 1934, as amended, except any non-dominant carrier as that term is defined in § 61.3(u) of this chapter * * *

10. Section 63.62 is revised to read as follows:

§ 63.62 Type of discontinuance, reduction, or impairment of telephone or telegraph service requiring formal application.

* * * * *

(a) The dismantling of removal of a trunk line (for contents of application see § 63.500) for dominant international carriers except as modified in Section 63.19;

* * * * *

11. Section 63.71 is amended by revising the section heading, first paragraph, and subsection (c) to read as follows:

§ 63.71 Special procedures for discontinuance, reduction or impairment of service by domestic carriers.

Any domestic carrier that seeks to discontinue, reduce or impair service shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.62 and 63.64 through 63.601:

(a) * * *

* * * * *

(5) One of the following statements:

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

"The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C. 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service."

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

"The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier. If you wish to object, you should file your comments within 30 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C. 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service."

(b) * * *

* * * * *

(4) Whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced or impaired.

(5) Any other information the Commission may require.

(c) The application to discontinue, reduce or impair service, if filed by a domestic, nondominant carrier, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. The application to discontinue, reduce or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.